ASIA COMMERCIAL FINANCE (M) BHD.

v.

PEMUNGUT HASIL TANAH & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[ORIGINATING SUMMONS NO. F 457 OF 1980]
5 OCTOBER 1982

LAND LAW: *Rejection by Collector of memorandum of transfer and charge and entry of lien-holder's caveat - (1) whether land, Malay Reservation land - Section 12, Malay Reservations Enactment 1913 - Whether certificate of official search conclusive - (2) jurisdiction of Court - Section 20, Malay Reservations Enactment 1933 - (3) Effect of s. 340, National Land Code.*

The plaintiff, who had lent money to the purchaser of two pieces of land in the Mukim of Sungai Buluh, applied for the entry of a lien-holder's caveat on the register document of title to the land and presented a charge executed in its favour for registration. At the same time a transfer executed in favour of the purchaser was presented for registration. All three were rejected by the Controller of Land Revenue, the charge on the ground that the land was within a Malay reservation area and subject to the Malay Reservations Enactment Cap. 142 ("the Enactment"). The plaintiff was not a body included and specified in that Enactment. The plaintiff then took out a certificate of official search, which certificate did not show that the land was within a Malay Reservation.

Held:

[1] The lands were included in the area declared as a Malay Reservation by *Gazette* notification, and this was conclusive evidence that the lands were a Malay Reservation and subject to the Malay Reservations Enactment Cap. 142 and the prohibitions imposed by it. The plaintiff was not entitled to hold the two pieces of land as security nor to lodge a lien-holder's caveat (s. 8 and s. 10). The instruments executed in favour of the plaintiff were void (s. 19(1)).

[2] Section 20 of the Enactment has ousted the jurisdiction of the Courts but even otherwise, the plaintiff failed in its prayers.

[3] Section 340 of the National Land Code, providing indefeasibility of title, did not apply at all, as in any case of conflict, the Enactment is to prevail (s. 21 of the Enactment). Furthermore, s. 340 did not apply to an interest that was not registered.

[Application dismissed.]

Legislation referred to:
Malay Reservations Enactment (Cap 142), ss. 8, 10, 12, 19(1), 20, 21
National Land Code 1965, ss. 340, (2)(b), (3)

For the plaintiff - Ong Tatt Poh; M/s. Ong & Co.
For the defendants - Malik Salleh, State Legal Adviser, Selangor

JUDGMENT

Wan Hamzah J:

Muhammad Ali bin Hitam has been the registered owner of two pieces of land in the Mukim of Sungai Buluh, held under the following titles:

H.S.(M) 1647 P.T. 1780
H.S.(M) 1648 P.T. 1733

He entered into an agreement with Rohani bin Ngah Muhammad Sam to sell the land to the latter for RM36,000. For the purpose of financing the purchase Rohani agreed to charge the land to the plaintiff. On 30 April 1979 Muhammad Ali executed a memorandum of transfer of the land in favour of Rohani. On 4 May 1979 a lien-holder's caveat was presented for registration. On 25 May 1979 the plaintiff on behalf of Rohani made a disbursement of RM20,000 to Muhammad Ali as payment of part of the price. On 26 May 1979 Rohani executed a charge of the land of the plaintiff. On 11 June 1979 Muhammad Ali's solicitor presented the memorandum of transfer and the memorandum of charge at the Land Office for registration, after a private search on the titles was made on the same day. The transfer, charge and lien-holder's caveat were rejected by the Collector of Land Revenue for registration. The memorandum of charge was rejected on the ground that the land is within a Malay reservation area and is subject to the provisions of the Malay Reservations Enactment Cap. 142 and the plaintiff is not a body included and specified in the Second Schedule to the said Enactment and as such is not allowed to hold the land as a chargee.

On 6 November 1979 the plaintiff took out a certificate of official search, which does not show that the land is within Malay Reservation. By this summons the plaintiff prays for the following declarations:

(a) a declaration that the official certificate of search dated 6 November1979 in respect of the land be conclusive evidence of the conditions, restrictions in interest and all other provisions affecting the said land for the time being held by that person as against the plaintiff;

(b) a declaration that the said land is not land within a "Malay holding" and is not subject to the prohibitions imposed by the Malay Reservations Enactment Cap. 142;

(c) a declaration that the plaintiff is entitled to hold the said land as security for the principal with interest thereon, advanced by the plaintiff to one Rohani;

(d) a declaration that the plaintiff is entitled to lodge a lien-holder's caveat on the said land; and

(e) a declaration that the plaintiff as *bona fide* purchaser for value is entitled to hold the said land as chargee.

FMS Government *Gazette* Notification No. 8015 dated 4 November 1931 reads as follows:

> In exercise of the powers vested in him by s. 3(i) of the Malay Reservation Enactment 1913, the Resident of Selangor, with the approval of the Ruler of the State in Council, hereby declares the area described in the schedule hereto, and delineated upon compiled sheets Nos. 76-A and 76-C, deposited in the office of the Superintendent of Revenue Surveys, Selangor, to be a Malay Reservation to be known as 'The Sungai Buluh Malay Reservation'.

I examined the sheets Nos. 76-A and 76-C referred to in the above *Gazette* Notification and I found that the land under H.S.(M) 1647 P.T. 1780 and H.S.(M) 1648 P.T. 1733, Mukim of Sungai Buluh is included in the area declared as a Malay Reservation in the above *Gazette* Notification.

Section 12 of the Malay Reservations Enactment 1913 required the Collector of Land Revenue to inscribe the words "Malay Reservation" on the issue and register documents of title in respect of every piece of land included in a Malay Reservation. In respect of the two pieces of land under H.S.(M) 1647 P.T. 1780 and H.S.(M) 1648 P.T. 1733, it appears that s. 12 was not complied with. Therefore when the plaintiff made a search on the titles in the Land Office

it did not find that the land was included in a Malay Reservation. However on sheets Nos. 76-A and 76-C, there is a note to the effect that the area shown therein is a Malay Reservation area. Apparently the plaintiff did not make a search on the sheets. If it had done so it would have found that the two pieces of land are included in a Malay Reservation. The plaintiff makes this application for the various declarations on the ground that the search in the Land Office did not disclose the fact that the two pieces of land are included in a Malay Reservation.

The Malay Reservations Enactment 1913 has been replaced by the Malay Reservations Enactment 1933 (Cap. 142). Section 20 of the latter Enactment provides *inter alia* as follows:

> If any doubt shall arise ... as to the mode of operation of this Enactment or the manner in which the provisions are to be construed or carried into effect or otherwise in relation thereto, the same shall be referred through the Menteri Besar to the Ruler of the State in Council who shall decide the same, and every such decision shall be final and shall not be questioned or revised by any Court.

It seems to me that these provisions have ousted the jurisdiction of the Court in the matter raised in this summons. But even if the Court has jurisdiction in the matter, in my opinion the plaintiff fails in its prayers.

Counsel for the plaintiff made submission relying on s. 340 of the National Land Code which provides *inter alia* that the title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the other provisions of that section, be indefeasible. The answer to this submission to be found in s. 21 of the Malay Reservations Enactment Cap. 142, which provides as follows:

> If in any case any conflict shall arise between the provisions of this Enactment and the provisions of the National Land Code, the provisions of this Enactment shall prevail.

Besides, s. 340 of the National Land Code deals with the title or interest of a registered proprietor and with lease, charge or easement which is registered. The section does not apply to an interest which is not registered. We are now dealing with an interest which has not been registered. Although a note was made on the land titles, of charge by Rohani to the plaintiff, the note was not signed and therefore it was not a registered memorial of charge. For registration to be complete the memorial must be signed by the proper authority. The word "DITOLAK" is printed on the note to show that the instrument of charge was rejected for registration. Section 19(1) of the Malay Reservations Enactment Cap. 142 provides that all dealing or disposals whatsoever and all attempts to deal in or to dispose of any Malay holding contrary to the provisions of the Enactment shall be null and void. Therefore the memorandum of charge executed by Rohani in favour of the plaintiff and the plaintiff's lien-holder's caveat are void instruments as referred to in s. 340(2)(b) of the National Land Code. It is true that subsection (3) of s. 340 contains a proviso that nothing in that subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration. But here also the proviso deals with title and interest which have been registered.

The following are specific answers to the various prayers of the plaintiff:

Prayer (a) : The official certificate of search dated 6 November 1979 is not conclusive evidence of whether the two pieces of land are within a Malay Reservation, but the FMS *Gazette* Notification No. 8015 dated 4 November 1931 is the conclusive evidence.

Prayer (b) : The two pieces of land are within a Malay Reservation and subject to the prohibitions imposed by the Malay Reservations Enactment Cap. 142.

Prayer (c) : The plaintiff is not entitled to hold the two pieces of land as security for money advanced by the plaintiff to Rohani, *vide* s. 8 of the same Enactment.

Prayer (d) : The plaintiff is not entitled to lodge a lien-holder's caveat against the two pieces of land, *vide* s. 10 of the same Enactment.

Prayer (e) : Even if the plaintiff could be treated as a *bona fide* purchaser for value, it is not entitled to hold the two pieces of land as chargee, *vide* s. 8 of the same Enactment.

The plaintiff's application is dismissed.

Also found at [1983] 1 CLJ 86